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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

GRETCHEN BROOKS, an individual,

Plaintiff,

v.

HARLON RIP CASWELL, an
individual, **RIP CASWELL**
SCULPTURES, INC., an Oregon
corporation d/b/a **CASWELL**
GALLERY, an Oregon assumed business
name, and **CASWELL PROPERTIES,**
LLC, a Washington limited liability
company, and **DOES 1-5**,

Defendants.

CV No. 3:14-cv-1232-AC

**DEFENDANTS' MOTION FOR LEAVE
TO FILE REPLY MEMORANDUM**

ORAL ARGUMENT REQUESTED

LR 7-1(A) CERTIFICATION

Counsel for Defendants hereby certifies, pursuant to LR 7-1(a), that he conferred with counsel for Plaintiff via email and telephone regarding the issues raised in this Motion, but was unable to reach agreement.

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MOTION

Defendants move the Court for leave to file a Reply to the response filed by Plaintiff in opposition to Defendants' Motion for Summary Judgment Re: Missing Molds. The draft Reply is attached to the Declaration of Michael Seidl as Exhibit A and it is ready for filing.

DISCUSSION

On August 21, 2015, Defendants filed a Motion for Summary Judgment Re: Missing Molds. After two extensions, Plaintiff filed her response to the motion for summary judgment on October 28, 2015. The Court, *sua sponte*, entered an order on October 27, 2015, striking this motion for summary judgment from the "under advisement" calendar.

As Defendants' counsel began to work on a Reply in early November, he decided that the October 27, 2015 court order was intended to put the motion for summary judgment on hold, until the Court ruled on pending motions to dismiss. Therefore, Defendants' counsel did not file a Reply, believing that the summary judgment motion had been effectively stayed by the Court.

On December 2, 2015, Defendants' counsel sent the following email to the Court's courtroom deputy:

Dear Paul,

I'm wondering if the court would be willing to conduct a Rule 16 status conference to discuss the status of this case?

Mr. Gale responded:

The motion to dismiss is under advisement (and overdue for ruling as of 10/31/15) and the motion for summary judgment is held in abeyance pending the court's ruling on the motion to dismiss. I'm wondering what else you want to discuss?...

Mr. Seidl responded to Mr. Gale:

I had three primary questions I was hoping to get clarified:

* * *

2. I have interpreted the court's order putting the motion for summary judgment re: missing molds in abeyance as not requiring the plaintiff's reply memorandum (which would have been due

after the court's order). I'm assuming that if the court lifts that order I would then be allowed to file a reply. Am I correct?

Mr. Gale responded to Mr. Seidl:

I think I used the word "abeyance," but I see that the judge simply struck the under advisement date. I would go ahead and file your reply and mention why it is late, as you weren't sure of the wording of that order.

Following that exchange between Defendants' counsel and the courtroom deputy, Defendants' counsel wrote to Plaintiff's counsel on December 12, 2015¹:

Molly, I'm working on the reply to your response on the MSJ. I interpreted the court's prior order as putting the motion on hold. But as Paul Gale recently stated, I should go ahead and file a reply anyway? Do you have any objection?

On December 16, 2015, Ms. Honoré responded that "At this point we object to filing a reply."

The emails are attached as Exhibit B to the Seidl Declaration.

Defendants' counsel may or may not have misinterpreted the Court's order striking the under advisement date for this Motion. It is unclear to Defendants' counsel what was intended by the Court. However, Defendants' counsel's interpretation was in good faith, whether erroneous or not.

Nothing has occurred that would possibly prejudice Plaintiff's position by allowing Defendants to file a Reply. Discovery has closed, and the case has essentially been on hold until the Court rules on the pending Motions to Dismiss.

Conversely, for one particular reason, Defendants would be substantially prejudiced if the Court denies leave to file the Reply that has been completed and is now ready to file. Plaintiff's response to the Motion rests on a declaration of a previously undisclosed expert. Therefore, Defendants' Reply addresses evidence that had previously not been disclosed in discovery, and

¹ After the first email on December 2 from Mr. Seidl to Mr. Gale, the subsequent emails from Mr. Gale and Mr. Seidl did not get copied to Plaintiff's counsel. Defendant's counsel did not notice this inadvertent error. Defendants' counsel sent the emails to Plaintiff's counsel when the error was noted.

was not available when Defendants' Motion was filed. The proffered Reply deals directly with this new evidence.

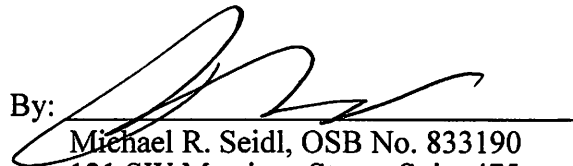
In order for the Court to have a full and complete understanding of Defendants' Motion and Plaintiff's Response, the Reply is essential.

CONCLUSION

Defendants respectfully request leave to file the attached Reply Memorandum.

DATED this 30th day of December, 2015.

SEIDL LAW OFFICE, PC

By: 

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Attorney for Defendants

DECLARATION OF SERVICE

I hereby certify that I served **DEFENDANTS' MOTION FOR LEAVE TO FILE
REPLY MEMORANDUM** on the following person(s) on the date indicated below:

Jeffrey M. Edelson
Molly K. Honoré
Markowitz Herbold PC
1211 SW Fifth Avenue, Suite 3000
Portland, OR 97204-3730
Fax: 503-323-9105
Email: JeffEdelson@MarkowitzHerbold.com
LawsonFite@MarkowitzHerbold.com
MollyHonoré@MarkowitzHerbold.com

Of Attorneys for Plaintiff

by the following indicated method(s):

- ☐ by **faxing** a full true copy thereof to said attorneys to the fax number noted above, which is the last known fax number for said attorneys, on the date set forth below.
- ☒ by **emailing** a full true copy thereof to said attorney to the email address noted above, which is the last known email address for said attorney, on the date set forth below.
- ☒ by notice of electronic filing using the E-filing system (LGR 30).
- ☐ by causing a full true copy thereof to be **mailed** to the attorneys at the attorneys' last-known office address listed above on the date set forth below.

DATED: December 30, 2015.

SEIDL LAW OFFICE, PC

By: 

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Attorney for Defendants